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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

MAR 15 1993

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	RM-8129
Amendment of Section 73.202(b))	
Table of Allotments)	MM Docket No. 92-294
FM Broadcast Stations)	
(Seaside, Oregon))	

To: Allocations Branch

REPLY COMMENTS OF KEN'S CORPORATION

Ken's Corporation ("KC"), by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.420 (1992), hereby submits its reply comments to the counterproposal filed by Contour Communications ("Contour") in the above-referenced proceeding.

KC originally petitioned the Commission on November 5, 1992, to institute a rule making proceeding to modify Section 73.202(b) of the Commission's Rules, 47 C.F.R. § 73.202(b), to allocate FM channel 255A to Seaside, Oregon. On December 14, 1992, the Commission issued a Notice of Proposed Rule Making proposing to amend the FM Table of Allotments as requested by KC. Notice of Proposed Rule Making (DA 92-1625, released December 14, 1992) ("Notice"). In its Notice, the Commission found that the public interest would be served by proposing the allotment of Channel 255A to Seaside, Oregon. Notice, ¶ 5. On February 3, 1993, Contour filed a counterproposal, contending that channel 255A should be allotted to Cannon Beach, Oregon, instead of

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Seaside.^{1/} Contour claimed a preference based on Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 307(b) (the "Act"), stating that an allotment to Cannon Beach would bring that community its first local radio service. On February 3, 1993, KC filed comments supporting the Commission's proposal to amend the FM Table of Allotments by allocating Channel 255A to Seaside. Contour's counterproposal appeared on a Public Notice released February 26, 1993, which authorized the filing of reply comments within 15 days. These reply comments are thus timely filed pursuant to Section 1.4 of the Commission's Rules.

The Commission should grant KC's original request to allot channel 255A to Seaside, Oregon, and deny Contour's counterproposal, because alternative channels are available which may be allotted to Cannon Beach. These alternate channels include Channel 243 (96.5 MHz) and Channel 264 (100.7 MHz). In addition, if the Commission grants the pending petition of Pacific Northwest Broadcasting Corporation to upgrade Station KMUZ-FM from Channel 234C3 to Channel 234C2 at Camas, Washington, and substitutes Channel 235A for Channel 234A at Seaside, Washington, as proposed in MM Docket No. 92-241, then Channel 234A may become available for use in Cannon Beach.

Moreover, even if no alternative channels could be allotted to Cannon Beach, the Commission should allot Channel

^{1/} Contour's proposed geographical coordinates are 45-53-42 and 123-57-36.

255A to Seaside because, under well-established Commission precedent, Seaside is more deserving of a new radio service than Cannon Beach. Contour claims that under Section 307(b) of the Act Cannon Beach is the preferred recipient of the channel because it has no local service, whereas Seaside already has one local service. However, the presumption in favor of an applicant for a first local service is rebuttable and must be weighed against countervailing factors. Moreover, even the presumed winner must make a needs showing. Harrall v. FCC, 267 F.2d 629 (D.C. Cir. 1959).

Not only has Contour failed to make the required needs showing, but Commission precedent makes it clear that a community of Seaside's size and attributes has a greater need for a second service than Cannon Beach has for a first service. According to the 1990 U.S. Census, the population within the Seaside city limits is 5,359 people, and the immediate Seaside area has a population of approximately 7,500 people. Seaside also has significant cultural, social, and commercial facilities, including the Oregon coast's largest convention center, a police department with substantially more full-time officers than the Cannon Beach police department, the only indoor swimming pool in the county, a campus of Clatsop Community College, a senior citizens center, a hospital, and substantial shopping facilities. In addition, Seaside is pursuing an aggressive growth strategy. By contrast, according to the 1990 U.S. Census figures, Cannon Beach has a population of only 1,221 persons and no viable

shopping facilities. While Cannon Beach has one small grade school, its children attend junior high and high school in Seaside. Given these facts, Commission case law clearly supports the conclusion that Seaside is more deserving of Channel 255A than Cannon Beach. See Ruarch Associates, 56 Rad. Reg. 2d 1593 (Rev. Bd. 1984) (concluding that applicant proposing second local service for community of 2,627 rebutted presumptive need for first local service for community of 752 and denying dispositive Section 307(b) preference to smaller community).

Finally, as KC demonstrated in its Petition for Rule Making, the proposed allocation of Channel 255A to Seaside, Oregon, will not conflict with any other currently assigned or allotted channels and complies fully with all minimum separation requirements specified in Section 73.207 of the Rules, 47 C.F.R. § 73.207.2/ In the event that Channel 255A is allocated to Seaside, Oregon, KC or its principals will promptly file an application for a construction permit for the new FM station.

For the foregoing reasons, KC respectfully submits that the Commission's proposal to amend the FM Table of Allotments by

2/ The Commission has specified a site restriction to avoid a short-spacing.

allocating Channel 255A to Seaside, Oregon, is in the public interest and should be adopted.

Respectfully submitted,

KEN'S CORPORATION

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March 15, 1993

CERTIFICATE OF SERVICE

I, Rachel T. Barksdale, hereby certify that a copy of the foregoing "Reply Comments of Ken's Corporation" has been served this 15th day of March, 1993, by First Class United States Mail upon the following:

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